CLECs with firm due dates for service installation.[19] Moreover, BellSouth's EDI interface, which is used for the "most critical" ordering and provisioning stages, "does not provide parity" because it does not allow CLECs to order "all [of the] services that [BellSouth] retail representatives can order electronically."[20] The Justice Department also expressed "significant concern" for the "high proportion of [CLEC] orders being handled manually."[21] Thus, the comments noted that "significant delays in the handling of CLEC orders" can result because order rejections and jeopardy notifications in almost all cases "dropout and are handled manually, typically sent back to the CLEC via fax."[22]

The comments of AT&T, MCI, and Sprint demonstrate that BellSouth's interfaces for repair and maintenance and for billing also are fundamentally flawed. Of the two interfaces BellSouth uses for repair and maintenance, the TAFI interface is inherently discriminatory

---

[19] DOJ SC Eval. at A-13 to A-18; see also MCI Comments at 36 (LENS is "cumbersome to use, fails to provide functionality important to CLECs, and is inferior to BellSouth's own pre-ordering systems in innumerable ways"); WorldCom Comments at 14-15; Sprint Comments at 28-30; LCI Comments at 2; ALTS Comments at 18-19; Intermedia Comments at 5; KMC Comments at 12-13.

[20] DOJ SC Eval. at App. A, A-20 to A-23; see AT&T Comments at 45-47; MCI at 21-24 (noting several problems with ordering interfaces, including that EDI can be used only for four complex services, and "even these orders fall out for manual processing"); LCI Comments at 2, 4-5; ACSI at 35-37; Intermedia at 6;

[21] DOJ SC Eval. at App. A, A-22; see LCI Comments at 4-5 (noting that "[t]here also appears to be disagreement among BellSouth representatives as to which orders require manual processing"); see also MCI Comments at 14-23; LCI Comments at 5; ACSI Comments at 36.

[22] DOJ SC Eval. at App. A, A-23; see MCI Comments at 14-16 ("Manual processing and transmission of rejects vastly slows the [ordering] process down" and is "particularly disastrous at the early stages of competition"); id. at 17-18 ("The manual return of service jeopardy notifications is almost certain to significantly delay the return of jeopardies in many cases past the due date when the customer's service was supposed to be turned up"); Sprint Comments at 32 ("BellSouth has regularly missed its commitment to notify Sprint within 48 hours of an order's receipt if there is a problem with the order").

because, like BellSouth's LENS interface, it is not a "standard system-to-system interface but rather [a] proprietary graphic user interface[]" that requires dual data entry,[23] and the EBI interface "is not currently available for repair of ordinary resold lines or basic unbundled elements such as loops" and thus also fails to provide parity.[24]

As for billing, BellSouth has failed to provide accurate bills to CLECs or accurate daily usage feeds for CLECs to use in billing end users. As to the former, Sprint (Comments at 33) reported that "BellSouth has been unable to provide accurate bills." For daily usage feeds, BellSouth has agreed on paper to provide them in the industry standard format, but CLECs still do not in fact have parity of access to those records.[25]

Finally, the comments demonstrated that OSS interfaces used for ordering UNEs were also plainly insufficient and well-behind even the limited progress made to date for resale.[26] Accordingly, BellSouth provides none of the required OSS interfaces at parity.

---

[23] MCI Comments at 25; see id. at 25-27; AT&T Comments at 47; Sprint Comments at 30-31 (TAFI is "the functional equivalent of 'sending a facsimile transmission,' since it results in BellSouth employees retrieving the information, then manually entering it into BellSouth's own system").

[24] MCI Comments at 27 n.21; see generally AT&T Bradbury Aff. ¶¶ 143-53; 213-17 (detailing other problems with TAFI and EBI).

[25] See e.g., MCI Comments, King Supp. Decl. ¶ 13 ("BellSouth has not yet provided properly formatted CABS BOS bills as it was obligated to do"); AT&T Bradbury Aff. ¶¶ 218-19; 249-55 (describing lack of parity, including BellSouth's failure to provide daily usage feeds for all customers, and the "increasing" amount of error in CABS-formatted bills).

[26] DOJ SC Eval. at App. A, A-22; See AT&T Comments at 49; MCI Comments at 22 ("BellSouth's automated ordering processes with respect to unbundled elements are even less well-established" and its claims that some UNEs can be ordered electronically are not supported by any data); see also Sprint Comments at 27; ACSI Comments at 36-37; Intermedia Comments at 6.

D. BellSouth Has Not Provided The Performance Measurements Needed To Establish Nondiscriminatory Performance For CLECs

Although the LPSC purports to provide a thorough analysis of BellSouth's checklist compliance, it has never even addressed, let alone found that BellSouth provides the performance measures that are essential to determining that BellSouth is in fact complying with its checklist obligations in a nondiscriminatory fashion. Any such finding would be incorrect because, as the comments confirm, BellSouth has not come close to providing the necessary performance measurements.[27]

However, one deficiency in particular merits some further discussion. Notwithstanding the Commission's determination in its Ameritech Michigan Order that comparative performance data on average installation intervals are absolutely "critical" and "fundamental" to demonstrating nondiscriminatory performance for CLECs,[28] BellSouth chose to submit no data on average installation intervals with its initial application for Louisiana. Instead, repeating the approach it followed in its South Carolina application, BellSouth has provided data only on the interval between BellSouth's "issue date" and its committed "due date" -- data that reveals

---

[27] See DOJ Evaluation at 19 & Ex. 4, p. A-33 ("BellSouth's proposed permanent performance measurements fall considerably short of what is needed"); AT&T Comments at 50-56 & Pfau Aff.; MCI Comments at 29, 43-52 ("BellSouth's proposed measurements are woefully inadequate to ensure parity"); LCI Comments at 7-9 ("the performance measures presented by BellSouth in this proceeding are lacking in several fundamental respects"); ALTS Comments at 6-11 ("it is clear that the performance measures BellSouth provides . . . fall[] far short of the Commission's Ameritech-Michigan 271 Order"); ACSI Comments at 46-49; Intermedia Comments at 9-13; KMC Comments at 14-15; Sprint Comments at 34-36 & Closz Aff. ¶¶ 104-109.

[28] Ameritech Michigan Order ¶ 168 ("The average installation interval is a critical measurement in determining whether nondiscriminatory access to these OSS functions has been provided to competing carriers"), ¶ 171 ("we find that submission of data showing average installation intervals is fundamental to demonstrating that [a BOC] is providing nondiscriminatory access to OSS functions"), ¶ 212.

nothing about how long the order was held before BellSouth "issued" it or when BellSouth actually completed the orders. See Stacy PM Aff. Exs. WNS-11 & WNS-12; Pfau Aff. ¶ 28.

Rather than trying to defend this obviously inadequate data in the South Carolina proceeding, BellSouth chose there to submit with its reply a completely new set of data which purported to measure the interval between BellSouth's "issue date" and its "completion date." See Stacy South Carolina PM Reply Aff. Ex. WNS-2. By this ploy of withholding the data until its reply, BellSouth precluded other parties to the South Carolina proceeding from pointing out the deficiencies in that new data.

If BellSouth adopts the same stratagem in its reply in this proceeding, any such new data must be disregarded in passing on BellSouth's application. In view of the prior, unambiguous statements of the Commission about the necessity for data on average installation intervals, there is no possible justification for BellSouth's failure to submit such data with its initial application. With this data missing from its initial application, BellSouth's application must be denied, and if BellSouth attempts to cure this omission by submitting new data with its reply, that data must be disregarded under the Commission's rules.[29]

In all events, even if the Commission were to consider any new data, it is not likely to help BellSouth's application. Indeed, the new data submitted by BellSouth with its reply in the South Carolina case does not support -- but in fact refutes -- BellSouth's claim that "overall

---

[29] See Ameritech Michigan Order ¶ 49 ("a section 271 application, *as originally filed*, [must] include *all of the factual evidence* on which the applicant would have the Commission rely") (emphasis in original), ¶ 50 ("a BOC's section 271 application must be complete on the day it is filed"), ¶ 152 ("we judge [a BOC's] checklist compliance based on the evidence submitted in its application").

results reflect nondiscriminatory performance."[30] BellSouth attempted to create an impression of nondiscriminatory performance by dividing its data into 12 separate categories based on whether the order is a "C" (change) order, an "N" (new) order, or a "T" (to and from, where the customer is moving) order, with each of those order categories further divided according to whether the order was residence nondispatch, residence dispatch, business nondispatch, or business dispatch. BellSouth apparently wanted the Commission to believe that its performance was nondiscriminatory because its performance for CLECs was allegedly better for half of the 12 categories.

The flaw in BellSouth's argument is that several of the 12 categories are minuscule in size, while BellSouth's performance for CLECs in all of the larger categories was substantially worse than its performance for its own retail operations. For example, although the data show better performance for CLECs in three of the four "T" order categories, the data also show that all four of the "T" order categories taken together comprised only 1.4% of CLEC orders. Similarly, the "C" residential dispatch category in which BellSouth had better performance for CLECs constituted only 0.1% of CLEC orders.

When the more significant order categories -- that is, those with substantial order volumes -- are examined, on the other hand, the data show decidedly inferior performance for CLECs. For example, for the largest CLEC order category -- "N" residence non-dispatch -- which accounted for 43% of CLEC order volume in October, BellSouth's reported average

---

[30] See Stacy South Carolina PM Reply Aff. ¶ 10. Because BellSouth chose not to file this data with its initial application in this proceeding, AT&T is compelled in this reply to address the October 1997 data which BellSouth submitted with its reply in the South Carolina case. If BellSouth should instead submit November 1997 data, its data should be accorded no weight for the additional reason that it post-dates the filing of comments on the application. See Ameritech Michigan Order ¶ 51 ("under no circumstance is a BOC permitted to counter any arguments with new factual evidence *post-dating* the filing of comments"), ¶ 154 (emphasis in original).

completion interval was 5.2 days for CLECs compared to only 2.8 days for BellSouth.[31] BellSouth's data for this category also show that CLEC orders were completed by BellSouth on the same day only 9% of the time, versus 50% for BellSouth, and that 33% of CLEC orders took 5 days or more, versus only 8% for BellSouth.[32] Similarly, for the second largest CLEC order category -- "C" residence non-dispatch -- which accounted for 27% of CLEC order volume in October and 75% of BellSouth's order volume, the reported average completion interval for CLECs was 2.2 days compared to only 1.7 days for BellSouth.[33]

In addition, the results reported by BellSouth for average completion intervals bear no resemblance whatever to the results actually experienced by AT&T. Thus, AT&T's data on BellSouth's performance for the month of October show that it took BellSouth an average of 9.78 days just to provision simple consumer migration orders for AT&T -- a result which strongly suggests that BellSouth is not properly measuring the interval from its receipt of the order to its completion. See Bradbury Aff. ¶ 238 & Attachment 66.[34] Thus, even if the Commission were to consider any similar late-filed data submitted with BellSouth's reply here, such data would be insufficient to show that BellSouth has met its burden of establishing nondiscriminatory performance for CLECs.

---

[31] See Stacy South Carolina PM Reply Aff. Ex. WNS-2, p. 1. This page of Stacy's South Carolina Reply Exhibit WNS-2 erroneously labels these intervals as hours rather than days. Subsequent pages of the exhibit are correctly stated in days, and BellSouth's Louisiana exhibits on average due date intervals are also measured in days. See Stacy PM Aff. Exs. WNS-11 & WNS-12.

[32] See Stacy South Carolina PM Reply Aff. Ex. WNS-2, p. 7.

[33] See Stacy South Carolina PM Reply Aff. Ex. WNS-2, p. 2.

[34] Likewise, MCI reports that BellSouth's data on its performance for CLECs "are radically inconsistent with MCI's data, which unambiguously show a lack of parity -- casting BellSouth's data into extreme doubt." MCI Comments at 30-31 & King Supp. Decl. ¶¶ 40-47.

E. BellSouth Has Not Made Available And Is Not Providing Resale Services Without Restrictions

No commenter defended the numerous restrictions that BellSouth has placed upon resale of Contract Service Arrangements ("CSAs") in Louisiana. See AT&T Comments at 58-65 & McFarland Resale Aff. (describing restrictions, and their discriminatory and anticompetitive impact). Those restrictions are squarely prohibited by the Commission's Local Competition Order, ¶¶ 939, 948-53, which was affirmed entirely in this regard by the Eighth Circuit. See Iowa Util. Bd. v. FCC, 120 F.3d 753, 819 (8th. Cir. 1997), pet. for cert. filed, (Nov. 17, 1997). The Commission has just recently applied the holding of the Local Competition Order in an amicus brief filed in AT&T's suit in Mississippi to enforce the Act and the Commission's Rules in its interconnection agreement in that state, which has virtually identical restrictions.[35] Accordingly, the Commission should find that BellSouth has failed to comply with this checklist item in Louisiana, for the reasons stated in its Amicus Brief and by AT&T.[36]

II. BELLSOUTH HAS NOT OTHERWISE SATISFIED "TRACK A" IN LOUISIANA

Given the extensive evidence of BellSouth's pervasive checklist noncompliance and the importance of checklist compliance to the development of meaningful local competition, the Commission should reject BellSouth's application on the basis of checklist noncompliance alone. The Commission therefore need not reach the "highly fact-specific" inquiry whether BellSouth

---

[35] Brief of the Federal Communications Commission, Amicus Curiae, filed in AT&T Communications, Inc. v. BellSouth Telecommunications, Inc., C.A. No. 3:97CV400WS, at 13-24 (S.D. Miss.) (Dec. 3, 1997) ("FCC Amicus Brief") (Attachment 1 hereto).

[36] BellSouth's other two resale restrictions on CSAs in Louisiana -- a ban on reselling a CSA to a new end user or group of new end users, and a ban on CSAs' public disclosure -- are also discriminatory and unreasonable, and should likewise be struck down, as AT&T demonstrated in its initial comments. See AT&T Comments at 59-65.

has demonstrated that there are "competing provider[s]" that present Louisiana consumers with a viable "commercial alternative to the BOC." Ameritech Michigan Order ¶ 75; SBC Oklahoma Order ¶ 60.[37] Nevertheless, should the Commission reach this issue, the comments make plain that BellSouth has not yet met the requirements of Track A.[38]

BellSouth relies primarily upon the presence of PCS providers to show that facilities-based "competing providers" are operating today in Louisiana.[39] Nearly all the commenters, however, reject the view that PCS companies are "competing providers of telephone exchange service,"[40] and thus conclude that Track A is not yet available to BellSouth in Louisiana. The Department of Justice does not reach a definite conclusion on this issue, but notes that "PCS and

---

[37] In the Matter of Application by SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, Memorandum Opinion and Order, FCC 97-228 (rel. June 26, 1997) ("SBC Oklahoma Order").

[38] As AT&T initially showed (at 69-70), and as the comments confirm, e.g., DOJ Eval. at 5 n.3; Sprint Comments at 22-23; ACSI Comments at 2-4, BellSouth has received one or more qualifying requests for purposes of foreclosing entry pursuant to Track B.

[39] The commenters were all in agreement that BellSouth did not meet the requirements of Track A by pointing to potential wireline facilities-based competitors. AT&T Comments at 68-69; DOJ Eval at 5 n.3; MCI Comments at 3, and the Commission should not permit BellSouth's application to proceed on this ground.

[40] E.g., MCI Comments at 1-9 ("the existence of PCS providers does not demonstrate the existence of a real commercial alternative to the BOC," and thus cannot be competing); WorldCom Comments at 5-11 ("PCS providers are also not 'competing providers' because, quite simply, PCS does not offer the type of dialtone alternative to BellSouth's local exchange service that Congress intended should be used as evidence that the local exchange market was sufficiently open"); Sprint Comments at 5-23 (though "PCS has the potential, under certain conditions, to become a viable, competitive alternative to fixed, wireline service in the future], t]he future is not here yet"); Competition Policy Institute ("CPI") at 1-2 ("Congress chose the word 'competing' rather than 'any' or 'other' in order to ensure that the provider offered a similar service" and "[u]nder traditional economic theory, PCS does not 'compete' with" basic telephone service). see also ACSI Comments at 7-11; ALTS Comments at 1-4; TRA Comments at 11-19; CompTel at 13-16; KMC at 2-4.

wireline services are not currently close substitutes in Louisiana." DOJ Eval. at 7. Only Ameritech provides even partial support for BellSouth on this issue, contending that PCS can be considered "telephone exchange service" under section 271. Ameritech Comments at 4-9.[41]

Even if the Commission chooses to resolve this issue, however, it need not address Ameritech's claim that PCS is telephone exchange service under section 271, but rather need only define the terms "competing provider," which, as the Department of Justice points out, are nowhere defined in the statute, meaning that the Commission's "reasonable construction" of these terms will receive due deference from a reviewing court. See DOJ Eval. at 7 (citing Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)). Because, as AT&T and all the other commenters demonstrated, PCS as it is currently offered is not a substitute for BellSouth's wireline service, PCS providers are not "competing" under section 271(c)(1)(A) -- even assuming, arguendo, they offer telephone exchange service under § 3(47)(A).

Although some other commenters dispute Ameritech's view that PCS is a telephone exchange service under section 271, e.g. MCI Comments at 7-8; ACSI Comments at 8-10, they also point out that, at most, Ameritech's claim means that PCS providers -- unlike cellular carriers, which Congress expressly excluded as "competing" under Track A -- are not inherently incapable of becoming "competing" under section 271. MCI Comments at 8-9; Sprint Comments at 18-19. Even under Ameritech's view, the Commission has discretion in determining when, if ever, PCS qualifies as "competing." This is consistent with the view --

---

[41] The LPSC did not comment on the state of local competition in Louisiana, including whether Louisiana PCS providers are "competing" with BellSouth's wireline services. As Sprint points out, Comments at 25-26, this is because BellSouth never asked the LPSC to investigate this issue, and had indicated that it would attempt to apply in Louisiana under Track B.

expressed by AT&T and Sprint (both of which have invested billions in PCS), and the Commission -- that PCS in the future may compete with wireline services.[42]

But because this is not the case today, as shown by the Commission's prior findings regarding PCS and the extensive record developed in this proceeding, the Commission could and should construe the terms "competing provider" in section 271 to exclude PCS as it is offered today. Thus, as many comments point out, the Commission has repeatedly found that "it is too early to state that broadband PCS providers' offerings may be perceived as a wireline substitute."[43] Moreover, commenters here offered numerous reasons why PCS services resemble and compete with cellular services, rather than ILECs' wireline offerings. These include the mobility of cellular and PCS,[44] the pricing of those services,[45] and the differing functionality and technology of mobile and wireline services.[46]

---

[42] AT&T Comments at 66 ("the PCS spectrum might someday be used to provide products that would be viable substitutes for wireline local service for a broad range of customers"); Sprint Comments at 19 ("Sprint is committed to investing the necessary capital . . . to allow PCS to realize its full economic potential," including, perhaps, "a meaningful alternative to landline fixed telephone service"); BellAtlantic-NYNEX Merger Order ¶ 91 ("fixed wireless may ultimately become a viable (and in some markets, a formidable) substitute for wireline services").

[43] Second Annual Report and Analysis of Competitive Market Conditions, FCC 97-75, at 52-55 (March 25, 1997) (quoted in MCI Comments at 5; WorldCom Comments at 8-9; Sprint at 6-7; KMC at 4). The Commission re-affirmed this view at least twice later this year. See Sprint Comments at 7-8 (citing decisions).

[44] AT&T Comments at 67; Sprint Comments at 9; ALTS Comments at 3; CompTel at iii; CPI at 1.

[45] AT&T Comments at 67, Roderick Aff. ¶¶ 8-11 & Hubbard/Lehr Aff. ¶¶ 56-59; MCI Comments at 5 & n.4; WorldCom Comments at 9; Sprint Comments at 6-7, 11-12; ALTS at 3-4; TRA at 16-18; KMC at 4; CPI at 1.

[46] AT&T Comments at 67 & Roderick Aff. ¶ 10; MCI Comments at 5-6 (noting technical limitations of current PCS offerings, including only one handset per number); Sprint Comments at 10-11; ALTS Comments at 3; CPI at 1.

Ameritech did not even address whether PCS should be considered "competing" under section 271, and other comments show that any such claim by Ameritech would be fruitless. Thus, other commenters demonstrated that the Commission's definition of "competing provider" for the purposes of section 251, 47 C.F.R. § 51.217(a)(1), does not bind it to include PCS in that phrase for purposes of section 271. See MCI Comments at 6-7; WorldCom Comments at 7-8. The presumption that identical words used in the same act have the same meaning "is not rigid" and "readily yields whenever . . . [the term was] employed in different parts of the act with different intent." Atlantic Cleaners & Dyers v. U.S., 286 U.S. 427, 433 (1932).

Here, of course, the purposes of section 251 and 271 are different: broadly defining "competing provider" in section 251 serves Congress's goal of opening telecommunications markets to competition by ensuring that all types of providers, including PCS, can use the tools in that section to bring competitive services to consumers. MCI Comments at 7; WorldCom Comments at 7-8. In section 271, however, the term "competing provider" is used as a "tangible affirmation that the local exchange is indeed open to competition" that would "assist" in "the explicit factual determination . . . that the requesting BOC has fully implemented the interconnection agreement elements set out in the checklist." Conference Report at 148; see WorldCom Comments at 5, 7-8. As the commenters point out, PCS providers have limited checklist item requirements and therefore their presence -- in an adjacent market -- is of little value in making that assessment.[47] Particularly given the deference the Commission receives

---

[47] See MCI Comments at 4 ("PCS providers generally do not need much more from the BOC than interconnection -- many critical checklist requirements such as unbundled loops are inapplicable to PCS providers"); WorldCom Comments at 6 & Porter Aff. (detailing numerous items, many of which are critical to CLECs, that are not normally required by PCS providers, including unbundled loops, unbundled switching, number portability, directory listings, and OSS).

in interpreting the term "competing provider," see supra, its use of that term can "vary to meet the purposes of the law," Atlantic Cleaners, 286 U.S. at 433, and thus can vary according to the different purposes embodied in sections 271 and 251.

Accordingly, even if the Commission should reach this issue, it need not address whether PCS is "telephone exchange service" under section 271, because PCS companies, as they currently offer service, are not "competing providers" under that section.

III. THE COMMENTS CONFIRM THAT BELLSOUTH'S ENTRY WOULD NOT BE IN THE PUBLIC INTEREST

Finally, the commenters overwhelmingly agree that BellSouth's entry would not now be in the public interest.[48] As the South Carolina Public Service Commission did in BellSouth's prior application, the LPSC claims that it is necessary to allow BellSouth's entry into long distance in order to stimulate local competition in Louisiana. LPSC Comments at 19-20. In its view, the "carrot" of section 271 relief is no longer needed to induce checklist compliance.

---

[48] DOJ Eval. at 33-35; AT&T Comments at 78-100; MCI Comments at 79-100; WorldCom Comments at 34-38; Sprint Comments at 63-82; ACSI Comments at 49-55; ALTS Comments at 28-32; Intermedia Comments at 14-16; TRA Comments at 38-53; Cox Comments at 13-19; CPI at 2-15.

An ad hoc coalition of manufacturers and telecommunications managers states -- without taking a position on the checklist or section 272 issues -- that the Commission is precluded from considering, with the respect to the public interest, any issues other than the impact of granting BellSouth's application on competition in interLATA service and manufacturing markets. Ad Hoc Coalition of Telecommunications Manufacturing Cos. et al. Comments at 1-3 & Exh. 2. This Commission has already rejected that argument, see Ameritech Michigan Order ¶ 386, and should do so again here. E.g., AT&T Comments at 60-61, 72-73. The coalition's only new argument in support of its flawed position -- that the Commission is bound by positions it took in MFJ-related proceedings (Exh 2. to Comments at 35-40) -- has no merit. Quite apart from whether the comments fairly characterize the Commission's prior positions, the Act itself -- with its unprecedented ambition of opening local telephone exchange markets to competition and using the incentive of interLATA authorization to do so, and its requirement that the Commission give substantial weight to the Department's views -- is a new circumstance that amply supports the Commission's assessment of the public interest.

Instead, it is the long distance companies that need "real incentives . . . to enter the local market in Louisiana," and, in particular, competition from BellSouth offerings of bundled local and long distance services is necessary to compel them to enter the local market. Id.

This view is untenable because it assumes, erroneously, that BellSouth has in fact done all it reasonably can to open its local markets to competition. In reality, BellSouth falls "well short" of that requirement. DOJ Eval. at 3. For example, as the Justice Department found, because of BellSouth's inadequate OSS, "competing carriers may tend to delay ramping up their operations until they gain a level of confidence in the incumbent's system." DOJ Eval. at 17 n.28; see id. at 17 ("competitors are unlikely to undertake entry on a significant scale when incumbents are offering only a paper commitment to provide the necessary support processes at some future point rather than adequate and reliable support processes"). Thus, to ensure that many carriers are able to compete in offering consumers bundled packages of local and long distance services, it is essential that BellSouth's application not be granted until local markets are "fully and irreversibly opened" to competition. DOJ Eval. at iv.

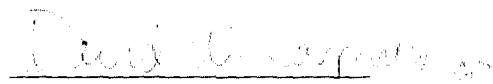
Second, the LPSC echoes (at 20) BellSouth's assertion that granting BellSouth's application would produce significant consumer benefits. This claim is convincingly refuted by numerous other commenters, who adjudged it "significantly overvalue[d]" (DOJ Eval. at 34), "fundamentally flawed," (MCI Comments at 91), and "discredited" (Sprint Comments at 73). As the Justice Department explains, BellSouth's claims of public benefit "reiterate here the mistaken or unsupported claims they made in South Carolina" and largely ignore the "more substantial" competitive benefits from requiring that BellSouth's "local markets be opened before allowing interLATA entry." DOJ Eval. at iv, 33-34. Because the benefits from opening the BOCs' local markets to competition will substantially exceed the benefits to be gained from more

rapid BOC participation in in-region long distance markets and because BellSouth's cooperation will be essential to opening its markets, granting BellSouth's application is not in the public interest.

CONCLUSION

For the reasons stated above and in AT&T's initial comments, BellSouth's section 271 application for Louisiana should be denied.

Respectfully submitted,



Mark C. Rosenblum
Leonard J. Cali
Roy E. Hoffinger
Stephen C. Garavito

Its Attorneys

Vivian V. Furman
Karen E. Weis

AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-3539

Kenneth P. McNeely
AT&T Corp.
1200 Peachtree Street, N.E.
Promenade I, Room 4036
Atlanta, GA 30309
(404) 810-8829

David W. Carpenter
Mark E. Haddad
Ronald S. Flagg
Kathleen S. Beecher
Michael J. Hunseder

Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Counsel for AT&T Corp.

December 19, 1997

ATTACHMENT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES ,INC.,	)	
Plaintiff,	)	C.A. No. 3:97CV400WS
v.	)	
BELLSOUTH TELECOMMUNICATIONS, INC. THE MISSISSIPPI PUBLIC SERVICE COMMISSION; AND THE PUBLIC SERVICE COMMISSIONERS OF THE STATE OF MISSISSIPPI, acting in their official capacities	)	
Defendants.	)	

MEMORANDUM OF THE FEDERAL COMMUNICATIONS COMMISSION AS *AMICUS CURIAE*

GARY G. GRINDLER
Acting Assistant Attorney General

BRAD PIGOTT
United States Attorney

CARLTON W. REEVES
Assistant U.S. Attorney
188 Capitol Street
Suite 500
Jackson, MS 39201

THEODORE C. HIRT
LESLIE V. BATCHELOR
BENJAMIN M. LAWSKY
U.S. Department of Justice
Federal Programs Branch
901 E. Street, N.W., Room 934
Washington, D.C. 20554
Telephone: (202) 514-3716

Attorneys for the Federal Communications Commission

OF COUNSEL
CHRISTOPHER J. WRIGHT
General Counsel

JOHN E. INGLE
Deputy Associate General Counsel

STEWART A. BLOCK
SUSAN L. LAUNER
Counsel
Federal Communications Commission
1919 M Street, N.W., Room 602

Date: December 3, 1997

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page**

Agency Rulings: **Page**

Statutes and Regulations: **Page**

Other Authorities: **Page**

MEMORANDUM OF THE FEDERAL COMMUNICATIONS COMMISSION AS *AMICUS CURIAE*

The Federal Communications Commission ("FCC") submits this Memorandum as *amicus curiae*. The issue before the Court is whether the interconnection agreement between BellSouth Telecommunications, Inc. ("BellSouth") and AT&T Communications of the South Central States, Inc. ("AT&T"), as approved by the Mississippi Public Service Commission ("MPSC"), meets the requirements of Sections 251 and 252, passed as part of the Telecommunications Act of 1996.[1] The FCC seeks to assist this Court in its analysis and application of the 1996 Act and the FCC's implementing regulations,[2] as it reviews the MPSC's determinations.

INTRODUCTION

In the conference report on the 1996 Act, the Conference Committee explained the fundamental purpose of the statute:

> [T]o provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . . .

S. CONF. REP. NO. 104-230, 104th Cong., 2d Sess. 113 (1996) (Joint Explanatory Statement of the Committee of Conference). This legislative purpose has guided the FCC's implementation of the 1996 Act and should inform this Court's review under Section 252(e)(6).

---

[1] The Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, enacted February 8, 1996. The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151, *et. seq.* The sections of the 1996 Act relevant here are codified in corresponding section numbers of 47 U.S.C. Only the statutory section will be cited here.

[2] *In re Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ("*FCC Order*"), *rev'd in part and aff'd in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997).

A. The Regulatory Background to the 1996 Act.

The nation's telephone system consists of two main types of service providers -- local exchange carriers ("LECs") providing basic local telephone services (usually with exclusive geographic franchises issued by state licensing authorities), and inter-exchange carriers ("IXCs"), such as AT&T, MCI, Sprint, and a host of smaller carriers, providing "long distance" service.[3] Before 1984, most of the large LECs were owned by AT&T as part of an integrated telephone system, known as the Bell System. The AT&T-owned local exchange companies were known as "Bell Operating Companies" or "BOCs."

Although there were some early instances of competing LECs in a single city,[4] local exchange carriers have operated for most of this century as franchised monopolies insulated from competition by law and regulation. Inter-exchange service was also historically operated as a monopoly service, provided by AT&T, interconnecting all local exchanges in a nationwide network.

Over the past twenty-five years, the FCC has introduced competition into various

---

[3] The historic divisions between LECs and IXCs have blurred in recent years as new technologies allowed customers to bypass portions of the networks of LECs and IXCs by using cellular and wireless telephones, private microwave systems, and direct link-ups to private networks using satellites. In addition, competitive access carriers ("CAPs") provide local trunking lines to interconnect IXCs with the local exchange switches in competition the trunks offered by LECs.

[4] In the early 1900s, a decade after the expiration of the original Bell telephone patents, some major cities had two or more competing telephone companies. *See* Lavey, *The Public Policies That Changed the Telephone Industries Into Regulated Monopolies: Lessons from 1915*, 39 FED. COMM. L.J. 171, 179 (1987). These separate telephone systems were not interconnected with each other and used separate long-distance services. *See, e.g.*, *Pacific Tel. & Tel. Co. v. Anderson*, 196 F. 699, 703 (E.D. Wash. 1912).

By the early 1920s most of these competing telephone systems had merged and consolidated, with the encouragement of federal and state regulators. *See, e.g.*, *Citizens Tel. Co. of Grand Rapids*, P.U.R. 1921E 308, 315 (1921) ("Competition resulted in duplication of investment, the necessity for the business man maintaining two or more telephones ... . The policy of the state was to eliminate this by eliminating, as far as possible, duplication.").

aspects of telecommunications services, including inter-exchange services.[5] However, the newly emerging competitors faced several difficulties as they sought for the first time to compete with incumbent telephone companies. Foremost, the new competitors were dependent on the LECs for access to their customers because none of the new competitors proposed to duplicate the local exchange networks. Monopoly control over the local exchange network meant that the AT&T-owned LECs and the unaffiliated independent local telephone companies controlled a critical "bottleneck" in the provision of all telecommunications services. Thus, in a typical long distance call the IXC would have to obtain "exchange access" service (*i.e.*, use of the "bottleneck" local exchange switches and local loops) to connect the telephone of the party originating the call to the IXC's long distance lines, and the IXC would similarly have to obtain exchange access service from the local exchange company of the party receiving the call at the terminating end of the call.

In 1974, the United States filed suit alleging that AT&T had violated federal antitrust laws by using its monopoly power in local exchange services to foreclose competition in inter-exchange services and telephone equipment manufacturing.[6] That suit ultimately led to a consent decree that required the breakup of AT&T in 1984 and reshaped the

---

[5] See, e.g., *Specialized Common Carriers*, 29 F.C.C.2d 870 (1971), *aff'd, Washington Util. & Trans. Comm'n v. FCC, 513 F.2d 1142, 1157-60 (9th Cir.), cert. denied, 423 U.S. 836 (1975) (permitting competition in private line services); Bell Telephone Co. of Pa. v. FCC, 503 F.2d 1250, 1269 (3d Cir. 1974), cert. denied, 422 U.S. 1026 (1975) (requiring BOC to interconnect with new inter-exchange carriers); Lincoln Tel. & Tel. Co. v. FCC, 659 F.2d 1092, 1105 (D.C. Cir. 1981) (requiring non-Bell LECs to interconnect with inter-exchange carriers); Regulatory Policies Concerning Resale and Shared Use of Common Services and Facilities, 60 F.C.C.2d 261, modified, 61 F.C.C.2d 70 (1976) (permitting companies that lease private line services at a bulk discount rate to resell those services to individual customers), aff'd sub nom. AT&T v. FCC, 572 F.2d 17, 23 (2d Cir.), cert. denied, 439 U.S. 875 (1978).*

[6] *See United States v. American Tel. & Tel. Co.*, 524 F. Supp. 1336, 1348-57, 1363-81 (D.D.C. 1981) (summarizing the antitrust claims against AT&T).

telecommunications industry.[7] Under the consent decree, all IXCs were given "equal access" to the local exchange network on terms equal to those given to AT&T. The BOCs (including BellSouth) were reorganized into separate regional holding companies independent of AT&T. The consent decree, *inter alia*, restricted the BOCs to providing services within local exchange areas (denominated "local access and transport areas" or "LATAs") and prohibited the BOCs from competing with the IXCs in providing interLATA services.

During the 1990s, the pressure grew to open the local exchange market to competition, fueled not only by nascent developing competitive alternatives to the BOCs and other incumbent LECs, but also by the BOCs' own efforts to enter the inter-exchange markets from which they had been excluded by the consent decree. Although some state public utility commissions ("state PUCs")[8] supported local competition, local exchange markets remained closed to all competition in many states. The situation was ripe for legislative attention.

B. The Statutory Framework of the 1996 Act.

The 1996 Act rests on the principle that the public will benefit from a "pro-competitive, de-regulatory national policy framework" for the nation's telecommunications system.[9] The 1996 Act seeks to remove statutory, regulatory and other barriers to entry into all aspects of the national telecommunications system, primarily by opening local exchange networks to competition. Congress acted against a backdrop of the historical difficulties encountered by

---

[7] *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

[8] The term "state PUC" will be used in this brief to refer to state commissions generally. The Mississippi Public Services Commission in particular will be referred to as the "MPSC."

[9] *See* S. CONF. REP. NO. 104-230, *supra*, at 113.